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10-18-1944

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1943

M. CLAUDE SCREWS, FRANK EDWARD JONES and
JIM BOB KELLEY, PETITIONERS

vs.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT



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M. Claude Screws, Frank Edward Jones and Jim Bob Kelley pray that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause January 14, 1944 (order denying motion for rehearing entered February 18, 1944) affirming the orders and judgments of the District Court of the United States for the Middle District of Georgia which overruled petitioners' demurrers to two counts of the indictment and which overruled petitioners' motion for a directed verdict.

ORDERS AND JUDGMENTS BELOW.

The order and judgment of the court overruling petitioners' demurrers to two counts of the indictment appears in the record at p. 24 and the order and judgment overruling petitioners' motion for a directed verdict appears in the record at pp. 166, 194. The

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opinion of the Circuit Court of Appeals appears in the record at p. 217.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 14, 1944 (R. 227) and the order denying a rehearing was entered February 18, 1944 (R. 232). The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the District Court of the United States had jurisdiction to try state arresting officer and his deputies for the offense of killing a person (who was in their custody) in violation of state laws and state regulations and without the sanction of the state or of any subdivision thereof.

STATUTE INVOLVED

The key statute involved is Sec. 52 of Title 18 U. S. C.; Criminal Code, Sec. 20; Revised Statute 5510; 35 Stat. 1092, and will be found in the Appendix, *infra*, p. 11.

STATEMENT

Petitioners were indicted at the October Term 1942 by a United States Grand Jury at Macon, Georgia (R. 2), on three counts. The first count charged a violation of Sec. 51 of Title 18 U. S. C.; the second count charged a violation of Sec. 52 of said title, and the third count charged a conspiracy to violate Sec. 52. The allegations of count 2 were substantially: That petitioners (who were state arresting officers) deprived a Negro citizen and an inhabitant of the State of

Georgia and of the United States of certain rights and privileges granted and secured to him by the 14th Amendment to the Constitution of the United States for that petitioners arrested said Negro and brought him to a place near the court house at Newton, Georgia, where petitioners unlawfully and wrongfully struck and beat said Negro in such a manner as to cause his death. Count 3 alleged a conspiracy to violate Sec. 52.

Petitioners filed their demurrers to the indictment (R. 15) on the primary grounds that the matters and things set forth and charged in the several counts did not constitute offenses against the laws of the United States and that the United States District Court did not have jurisdiction to try petitioners for the alleged offenses. The court sustained the demurrers to count 1 and overruled the demurrers to counts 2 and 3 (R. 24), upon which petitioners were tried and convicted.

The pertinent facts, as disclosed by the evidence, are substantially as follows:

That early in the evening on which Hall (the victim) was killed, Sheriff Screws received a warrant for his arrest; that the warrant was not immediately served as the Sheriff was busy on other matters; that just before midnight Jones and Kelley went to the office of the Sheriff who asked them to use his automobile in serving the warrant on Hall; that pursuant to said request Jones and Kelley arrested Hall and brought him to Newton, Georgia, where they found the Sheriff standing near the court house square; that when the automobile stopped the Sheriff opened the door thereof and told Hall to get out; that Hall stepped out of the automobile with a shot gun in his hand and began to use threats and opprobrious words while resisting arrest; that the Sheriff (being in fear of his life and

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safety) began to hit Hall with his fist and told Jones to hit him with his blackjack; that after Hall was subdued he was locked in jail by Jones and Kelley; that shortly thereafter the Sheriff inquired as to the physical condition of Hall and that upon learning that his condition was critical, he (the Sheriff), called for an ambulance and medical assistance; that Hall died soon after reaching the hospital; that there was "bad blood" and ill feeling between Sheriff Screws and the deceased; that a pistol which had previously been taken away from Hall by Jones while he was acting as policeman of the City of Newton, Georgia, was turned over to Sheriff Screws, who refused to return it to Hall without an order of court (R. 68); that Hall appeared before the Grand Jury of Baker County and sought to obtain the pistol from the Sheriff (R. 41); that when Hall failed to get any relief from the Grand Jury (as it had no authority in the matter) he caused a letter to be written to the Sheriff by a lawyer seeking to regain possession of the pistol (R. 194); that on the day Sheriff Screws received the letter he and the other petitioners became intoxicated and were intoxicated at the time Hall was arrested and killed.

No evidence was introduced that petitioners or either of them acted under color of any particular law or under any statute, ordinance, regulation or custom of the State of Georgia or of any subdivision thereof in taking the life of Hall. It was stipulated that Screws was Sheriff of Baker County and that Jones was a policeman of the City of Newton. No race discrimination was proved. The Government contended that the taking of the life of Hall (even though contrary to State law and even though unauthorized by the State or any subdivision thereof) was *pro tanto* the act of the State.

At the conclusion of all the evidence petitioners (defendants in trial court) moved for a directed verdict upon grounds substantially the same as those raised by their demurrs, to-wit, that the court did not have jurisdiction to try petitioners for the offenses charged and as proved. This motion was overruled (R. 166, 194). Petitioners were sentenced to pay a fine of \$1,000.00 each and to serve three years in prison (R. 11, §2, 14).

Upon appeal by petitioners to the Circuit Court of Appeals for the Fifth Circuit the judgment of the court below was affirmed (R. 227). Sibley, Circuit Judge, dissented (R. 228). The court in deciding that the court below had jurisdiction, held, in effect, that even though the officers did not act under any particular statute of the State or of the City of Newton, that they were acting "under color of law" merely because they were acting by virtue of their offices: that the act of a state officer is *pro tanto* the act of the State.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that the District Court of the United States had jurisdiction under Sec. 52 of Title 18 U. S. C. to try state arresting officers for the offense of killing a prisoner contrary to state laws and without the sanction of the State or of any subdivision thereof.
2. In holding that the United States District Court had jurisdiction to try state arresting officers under Sec. 88 of Title 18 U. S. C. for a conspiracy to arrest and kill a citizen contrary to state laws and without authority or sanction of any law of the State or of any subdivision thereof.

3. In holding that the violation of a state law by a state arresting officer was a violation of a federal right.
4. In holding that the act of a state officer contrary to state law and without authority of state law or of the law of any subdivision thereof, was *pro tanto* state action.
5. In holding that the 14th Amendment to the Constitution of the United States secures the fundamental rights of life and liberty against the acts of State officers, even though such acts be contrary to State law, and without the sanction of any law or custom.
6. In holding that the wrongful and illegal beating of a prisoner by a state arresting officer, acting under a warrant, whether void or valid, is an unlawful deprivation of a right of a citizen of the United States which the 14th Amendment protects and which Sec. 52 makes a criminal offense.
7. In not reversing the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

The question in this case is the extent of the jurisdiction of the United States District Court to try a state officer for the offense of assaulting a state prisoner, contrary to state law, and without the sanction of any law or custom.

The question of an officer acting under a particular statute, law, ordinance, regulation or custom is not involved.

The question of an officer acting under "color of law" is not involved unless it can be said that the act of a state officer is *pro tanto* the act of the state.

The exact question involved has not been decided by this Court, and it is one of gravity and importance

to every state arresting officer in the United States.

Since there is a special division of the Department of Justice of the United States commonly known as the Civil Rights Division whose personnel is militant in seeking to expand the law by the prosecution of state officers for assaulting state prisoners, contrary to state law, this Honorable Court should settle the jurisdiction of federal courts to try such cases.

Sec. 52 (of Title 18 U. S. C.) is an ancient statute, yet it has never been construed by this Court when applied to a similar state of facts as presented by the record herein.

While this Court has not decided the exact question involved, manifestly the decision of the Circuit Court of Appeals is in conflict with numerous decisions of this Court on analogous questions.

This Court said in a fairly early case:

"The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are instituted among men, deriving their just powers from the consent of the government.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'unalienable rights with which they were endowed by their Creator.' Sovereignty, for this purpose, rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State, than it would be to punish for false imprisonment or murder itself."

U. S. Cruikshank, 92 U. S. 553.

In a slightly later case this Court held:

"But when a subordinate officer of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords to him, as in the case at bar, it can hardly be said that he is denied, or cannot enforce, in the judicial tribunals of the State the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced."

Virginia v. Rives, 100 U. S. 321.

In a much more recent case this Court held:

"The Fourteenth and Fifteenth Amendments operate solely on state action and not on individual action. Unless the Thirteenth Amendment vests jurisdiction in the National Government, the remedy for wrongs committed by individuals on persons of African descent is through state action and state tribunals, subject to supervision of this court by writ of error in proper cases."

Hodges v. U. S., 203 U. S. 1.

In a case very much in point this Court held:

"Where the jurisdiction of the Circuit Court is invoked on the ground of deprivation of property without due process of law in violation of the Fourteenth Amendment, it must appear at the outset that the alleged deprivation was by act of the State.

"And where it appeared on the face of plaintiff's own statement of his case that the act complained of was not only unauthorized but was forbidden by the state legislation in question, the circuit court rightly declined to proceed further and dismissed the suit."

Barney v. State of New York, 193 U. S. 430.

This Court has also held:

"Under 641, 642, Rev. Stat., there is no right of removal into the Circuit Court of the trial of a person indicted under the state law where the alleged discrimination against the accused in respect to his equal rights, is due merely to illegal or corrupt acts of administrative officers unauthorized by the constitution or laws of the State as interpreted by its highest court. The remedy for wrongs of that character is in the state court, and ultimately in this court by writ of error to protect any right secured or granted to the accused by the Constitution or laws of the United States and which has been denied to him in the highest court of the State in which the decision in respect to that right can be had."

Kentucky v. Powers, 201 U. S. 1.

This Court in a very recent case affirmed the decision of the Circuit Court of Appeals for the Seventh Circuit wherein it was held "that the action of the members of the State Board, being contrary to State law, was not State action and was therefore not within the provisions of the 14th Amendment."

Snowden v. Hughes, No. 57, Oct. Term 1943,

decided Jan. 17, 1944.

The officers in the instant case did not deny the victim, Robert Hall, any rights granted or secured to him by the 14th Amendment to the Constitution of the United States unless their acts amounted to State action, for it is clear that this amendment is an inhibition against State action and not against individual action.

Hodges v. U. S., *supra* (203 U. S. 1).

For the foregoing reasons it is respectfully submitted

that the petition for writ of certiorari should be granted.

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APPENDIX

SECTION 52 of Title 18 U. S. C.; Criminal Code
Sec. 20 provides:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. (R. S. 5510; Mar. 4, 1909, c. 321, 20, 35 Stat. 1092.)"